

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0167

Corporate Income Tax

For the Fiscal Years Ending June 30, 1996, 1997, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax - Expenses Related to Foreign Source Dividends

Authority: 45 IAC 3.1-1-8

The taxpayer protests the auditor's calculation of expenses applied against foreign source dividends.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer manufactures and sells electronic medical monitoring equipment and disposable medical supplies. The taxpayer also generates revenues from the performance of services on maintenance contracts and other service work on equipment it has sold. The department audited the taxpayer; the audit resulted in an assessment of additional gross income tax, supplemental net income tax (SNIT), and penalty.

In a letter dated November 14, 2000, the taxpayer conceded its liability for the additional gross income tax. However, the taxpayer protested the adjustment to adjusted gross income tax (resulting in the assessment of additional SNIT) and the imposition of penalty.

I. Adjusted Gross Income Tax - Expenses Related to Foreign Source Dividends

The taxpayer protested the auditor's calculation of expenses applied against foreign source dividends. Following review and discussion, the auditor and the taxpayer resolved this matter. The auditor has completed a supplemental audit to reverse this adjustment in the taxpayer's favor. In a letter dated March 27, 2002, the taxpayer withdrew its protest of this issue based on the proposed supplemental audit adjustments.

FINDING

The taxpayer has withdrawn its protest of this issue.

II. Tax Administration – Penalty

For gross income tax purposes, the taxpayer originally reported income from the performance of services at the lower rate of tax. The audit properly reclassified these sources of income to the higher rate of tax. This reclassification constitutes the bulk of the audit assessment.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In a letter dated May 6, 2002, the taxpayer argued that “... there was no intentional disregard of the law in this matter.” The taxpayer is advised that the penalty being imposed is not for intentional disregard of the law (fraud) but for negligence. The taxpayer has demonstrated ignorance of the Indiana gross income tax law. The taxpayer should have known that income derived from providing services is taxable at the higher rate of tax. The taxpayer has not established that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.